

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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LINDA MIGLIORI, ET AL.,

: No. 5:22-cv-00397-JFL

Plaintiffs,

v.

LEHIGH COUNTY BOARD OF ELECTIONS,

Defendant,

And

DAVID RITTER,

Intervenor Defendant.

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**JOINT STIPULATION OF FACTS**

Per FRCP 56(c)(1)(A), the parties, by and through the undersigned counsel, do hereby stipulate and agree that the following facts are undisputed:

**I. The 2020 Election Cycle**

1. Under the Pennsylvania Election Code, registered voters may request an absentee ballot, if they fulfill the requirements for voting absentee, or any registered voter may request a mail-in ballot from their county board of elections.

2. Pennsylvania absentee and mail-in ballot applications require the voter to provide their name, address of registration, and proof of identification, 25 P.S. §§ 3146.2, 3150.12. A true, correct, and authentic copy of the mail-in ballot application form used in Lehigh County for the 2021 election cycle is attached as Exhibit A.

3. Once the county elections board verifies the voter's identity and eligibility to vote, they send an absentee or mail-in ballot package that contains: 1) the ballot; 2) a "secrecy envelope" marked with the words "Official Election Ballot"; and 3) a pre-addressed outer return

envelope that contains the voter declaration prescribed by law, which the voter must sign and date. The packet also contains instructions to the voter for marking their ballot and submitting it properly.

4. Absentee and mail-in ballot voters mark their ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer return envelope that includes a printed voter declaration. *Id.* §§ 3146.6(a) and 3150.16(a).

5. Absentee and mail-in ballot voters were required to deliver the entire package by mail or by hand to their county elections board, and delivery is timely if made by 8:00 p.m. on Election Day. *Id.* §§ 3146.6(c) and 3150.16(c).

6. As it concerns the voter declaration on the outer envelope of an absentee or mail-in ballot, the Pennsylvania Election Code, in material part, states as follows: “The elector shall then fill out, date and sign the declaration printed on such envelope.” 25 P.S. §§ 3146.6(a) and 3150.16 (a).

7. This provision was at the heart of several challenges during the 2020 election cycle, which resulted in the meaning of the provision being posed to the Pennsylvania Supreme Court in multiple consolidated appeals. This yielded a split 3-1-3 decision of the Pennsylvania Supreme Court in *In re Canvass of Absentee and Mail-in Ballots of November 3, 2020 Gen. Election*, 241 A.3d 1058 (Pa. 2020), which resulted in undated absentee and mail-in ballots being counted in the 2020 election.

8. The Lehigh County Board of Elections (hereafter, “the Board”) changed the outer envelope for absentee or mail-in ballots for the 2021 election.

9. True, correct, and authentic copies of the envelopes the Board supplied to absentee and mail-in voters for the 2020 and the 2021 election cycles are attached as Exhibits B and C.

10. The envelope used in the 2021 election was approved by the Secretary of the Commonwealth.

11. For the 2021 election, the Board adopted instructions to be mailed with each absentee or mail-in ballot.

12. A true, correct, and authentic copy of the instructions the Board supplied to absentee or mail-in voters during for the 2021 election is attached as Exhibit D.

13. The Pennsylvania Department of State issued supplemental guidance to the various county election boards for the 2021 Municipal Election.

14. The Department did so via a June 1, 2021 email, with the subject line “DOS Email: Reminder Regarding Requirement to Sign AND Date Declaration Envelopes.”

15. A true, correct, and authentic copy of the June 1, 2021 email is attached as Exhibit E.

## **II. The 2021 Municipal Election in Lehigh County**

16. The municipal election was held in Lehigh County on November 2, 2021. One local race remains undecided.

17. Three vacancies for the office of Judge of the Court of Common Pleas of Lehigh County were on the November 2, 2021 ballot, with six candidates vying for the three available offices.

18. As of November 15, 2021, David Ritter had received the third-most votes from the Municipal Election—and was thus a presumptive successful candidate—leading the fourth-place candidate, Zachary Cohen, by 74 votes.

19. The overall vote totals were as follows:

Candidate	Vote Total
Tom Caffrey (REP)	35,301
Tom Capehart (REP)	33,017
David Ritter (REP)	32,602
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Zachary Cohen (DEM)	32,528
Maraleen Shields (DEM)	32,041
Rashid Santiago (DEM)	29,453

20. Judges Tom Caffrey and Tom Capehart have already been sworn in as commissioned judges in Lehigh County as a result of the outcome of the November 2 election; they were sworn in on or about January 3, 2022.

21. Approximately 72,000 electors have had their ballots tallied in Lehigh County from the 2021 Municipal Election; of those, approximately 22,000 ballots were cast by absentee or mail-in ballot.

22. As the Board received absentee or mail-in ballots for the November 2 election, if they did not have a date on the voter declaration, or had a date in the wrong place, they were set aside.

23. A total of 257 absentee or mail-in ballots were received by the Board for the November 2 election with signed voter declarations that did not include handwritten dates; a total of 4 absentee or mail-in ballots were received by the Board with a date in the wrong location. These ballots are hereafter referred to as the “Disputed Ballots.”

24. This case concerns signed but undated declarations on absentee or mail-in ballot envelopes submitted by Plaintiffs and 252 other voters for the November 2021 municipal election. Each of them applied for and received an absentee or mail-in ballot for the 2021 election cycle, signed the return envelope, and returned it before the 8:00 p.m. deadline on Election Day.

25. On or about November 20, 2021, after reviewing the Disputed Ballots, staff working on behalf of candidate Zac Cohen were able to generate a list of electors whose voter declaration was undated. The list reflected their names, address, party registration, and age. Per the November 20 list generated by the Cohen campaign, the average age of these voters was 71 at the time they voted. 224 of them were over 55 and 193 were over 65. Fifteen of the Disputed Ballots came from voters over the age of 90, one of whom was 100 years old and another was 103 years old.

26. The Disputed Ballots were all timely received by the Board (i.e., before November 2, 2021 at 8 PM) and none are the subject of known or suspected fraud.

27. The Pennsylvania Department of State has developed a system known as the Statewide Uniform Registry of Electors (“SURE”). The SURE system contains various information about each elector in the Commonwealth, and county boards of election, like the Board, are able to access the SURE system to add, modify, or delete information regarding registered voters within their own county in the system as necessary.

28. For the November 2 election, the Board marked each of the Disputed Ballots “cancelled” in the SURE system.

29. The Board’s change in the SURE system was designed to cause an automatically-generated email to be sent from the email address [RA-voterregstatcert@state.pa.us](mailto:RA-voterregstatcert@state.pa.us), to the impacted elector if he or she had an email address on file. Voters who opted not to provide an email address on their absentee or mail-in ballot applications would not have received any such communication.

### **III. Litigation Regarding the Disputed Ballots**

30. After the November 2 election, the Board convened a public hearing on November 15, 2021 to consider the Disputed Ballots.

31. The Board's November 15, 2021 hearing was transcribed.
32. A true, correct, and authentic copy of the Board transcript is attached as Exhibit F.
33. At the November 15 hearing, David Ritter and Zachary Cohen presented argument regarding the Disputed Ballots.
34. The Board voted 3-0 to count the Disputed Ballots.
35. On November 17, 2021, David Ritter filed an appeal of the Board's decision to count the Disputed Ballots with the Court of Common Pleas of Lehigh County.
36. The Court of Common Pleas of Lehigh County held an evidentiary hearing, and then heard argument, at a transcribed hearing on November 22, 2021.
37. A true, correct, and authentic copy of the trial court transcript is attached as Exhibit G.
38. On November 30, 2021, the Court of Common Pleas of Lehigh County issued an opinion and order, affirming the decision of the Board to count the Disputed Ballots.
39. A true, correct, and authentic copy of the Court of Common Pleas of Lehigh County's opinion and order is attached as Exhibit H.
40. On December 1, 2021, Ritter appealed the trial court's decision to the Pennsylvania Commonwealth Court.
41. On December 2, 2021, Ritter filed an Emergency Petition for a Stay Pending Appeal with the Common Pleas Court of Lehigh County.
42. On December 3, 2021, the court granted the petition, stayed the November 30 order, and stayed counting of the Disputed Ballots.
43. On January 3, 2022, the Commonwealth Court issued an opinion and order.

44. A true, correct, and authentic copy of the Commonwealth Court's opinion and order is attached as Exhibit I.

45. On January 7, 2022, Zachary Cohen filed a petition for allowance of appeal with the Pennsylvania Supreme Court.

46. On January 27, 2022, the Pennsylvania Supreme Court entered an order denying the petition.

47. A true, correct, and authentic copy of the Pennsylvania Supreme Court's order is attached as Exhibit J.

48. Also on January 27, 2022, the Court of Common Pleas of Lehigh County entered an order directing the Board to count the 4 Disputed Ballots with dates in the wrong location, but to otherwise not count the 257 ballots with no dates on the voter declaration.

49. A true, correct, and authentic copy of the Court of Common Pleas of Lehigh County's January 27, 2022 order is attached as Exhibit K.

50. On January 31, 2022, the Board canvassed the 4 ballots, which yielded 3 additional votes for Candidate Cohen, reducing Ritter's vote lead to 71.

51. As of the date of these Stipulations, the contents of the ballots within the Disputed Ballots (save for the four just described) remain unknown to anyone; i.e., who would receive additional votes has not been determined for the 257 that remain uncounted.

52. The Board has not yet fully and finally certified the election results from the November 2, 2021 election. By Order of this Court, the Board will not take any further steps to officially certify any 2021 election returns or issue a certificate of elections to any candidate unless and until it is authorized to do so by further Order of the Court. (Dkt. 13.)

#### IV. The Plaintiffs

53. Each of the five Plaintiffs submitted an absentee or mail-in ballot with a signature but no handwritten date on the voter declaration, and thus their ballots are among the remaining 257 Disputed Ballots. Their primary interest in filing this suit is in having their ballots counted.

54. True, correct, and authentic copies of the outer envelopes of Plaintiffs' November 2, 2021 ballots are attached as Exhibit L.

##### **Linda Migliori**

55. Plaintiff Linda Migliori is a 70-year-old resident of Schnecksville, Pennsylvania. She has been a registered voter in Lehigh County for 24 years and regularly votes in every presidential election and important off-year elections.

56. Plaintiff Migliori signed up to be on the permanent mail-in voting list and had a ballot automatically mailed to her before the November 2021 election.

57. Plaintiff Migliori received her mail-in ballot a few weeks before the November election. She marked it, sealed it into the secrecy envelope, inserted that into the outer return envelope, signed the outer return envelope, and deposited it into a Board of Elections designated drop box at the North Whitehall Township building.

58. Plaintiff Migliori's mail-in ballot was received by the Board on or about October 28, 2021.

59. The Board marked her ballot cancelled in the SURE system on October 29, 2021.

60. Plaintiff Migliori has a valid email address on file in the SURE system.

61. On October 29, 2021, Plaintiff Migliori received an email, from RA-  
voterregstatcert@state.pa.us with the subject line, "Your Ballot Has Been Received."

62. A true, correct, and authentic copy of the October 29, 2021 email is attached as Exhibit M.

63. Plaintiff Migliori's ballot is among the Disputed Ballots at issue in this case.

**Francis Fox**

64. Plaintiff Francis Fox is a 66-year-old resident of Allentown, Pennsylvania. He has been a registered voter in Lehigh County since he was first eligible to vote and votes in every primary and general election.

65. As soon as Plaintiff Fox received his mail-in ballot packet from Lehigh County, he marked the ballot, sealed it into the secrecy envelope, inserted that into the outer return envelope, signed the return envelope, and mailed the completed packet back to Lehigh County.

66. Plaintiff Fox's mail-in ballot was received by the Board on or about October 18, 2021.

67. The Board marked his ballot cancelled in the SURE system on October 20, 2021.

68. Plaintiff Fox opted not to provide an email address to be placed on file in the SURE system.

69. Plaintiff Fox did not learn that his ballot would not be counted until after the November 2021 municipal election.

70. Plaintiff Fox's ballot is among the Disputed Ballots in this case.

**Richard Richards**

71. Plaintiff Richard Richards is a 66-year-old resident of Allentown and a registered voter in Lehigh County. Mr. Richards has been a registered voter since reaching the legal voting age and generally votes in every election.

72. Plaintiff Richards applied for a mail-in ballot before the November 2021 municipal election. He marked his ballot, sealed it into the secrecy envelope, inserted that into

the outer return envelope, signed the return envelope, and mailed the completed packet back to Lehigh County.

73. Plaintiff Richards's mail-in ballot was received by the Board on or about October 14, 2021.

74. Plaintiff Richards received an email confirmation from the Board that it had received his mail-in ballot; he no longer has a copy of that email.

75. The Board marked his ballot cancelled in the SURE system on October 20, 2021.

76. Plaintiff Richards has a valid email address on file in the SURE system.

77. Plaintiff Richards did not learn that his ballot would not be counted until after the 2021 election.

78. Plaintiff Richards' ballot is among the Disputed Ballots in this case.

### **Kenneth Ringer**

79. Plaintiff Kenneth Ringer is a 70-year-old resident of Macungie, Pennsylvania. He is a registered voter in Lehigh County and has been a registered voter in Pennsylvania for 20 years.

80. Plaintiff Ringer generally votes in every primary and general election.

81. Plaintiff Ringer applied for an absentee ballot in November 2021 because he planned to be and was away on vacation on the date of the November election.

82. When Plaintiff Ringer received his absentee ballot, he marked it, sealed it into the secrecy envelope, inserted that into the outer return envelope, signed the outer return envelope, and mailed the completed packet back to Lehigh County.

83. Plaintiff Ringer's absentee ballot was received by the Board on or about November 1, 2021.

84. The Board marked his ballot cancelled in the SURE system on November 1, 2021.

85. Plaintiff Ringer has a valid email address on file in the SURE system.

86. Plaintiff Ringer did not learn that his ballot would not be counted until after the November 2021 election.

87. Plaintiff Ringer's ballot is among the Disputed Ballots in this case.

**Sergio Rivas**

88. Plaintiff Sergio Rivas is a 76-year-old resident of Allentown, Pennsylvania and a registered voter in Lehigh County. He has been a registered voter in Lehigh County for 18 years. He has been a registered voter in Pennsylvania for more than 55 years and generally votes in every election.

89. Plaintiff Rivas applied for a mail-in ballot before the November 2021 municipal election. He received his ballot in October, marked it, sealed it into the secrecy envelope, inserted that into the outer return envelope, signed the outer return envelope, and mailed the completed packet back to Lehigh County approximately one week after he received it

90. Plaintiff Rivas's mail-in ballot was received by the Board on or about October 25, 2021.

91. The Board marked his ballot cancelled in the SURE system on October 26, 2021.

92. Plaintiff Rivas opted not to provide an email address to be placed on file in the SURE system.

93. Plaintiff Rivas did not learn that his ballot would not be counted until after the November 2021 election.

94. Plaintiff Rivas' ballot is among the Disputed Ballots in this case.

**V. The Defendants**

95. David Ritter is a licensed Pennsylvania attorney, and a candidate for Judge of the Court of Common Pleas of Lehigh County on the November 2, 2021 ballot.

96. The Board is a 3-member board established under the Pennsylvania Election Code, whose responsibilities include canvassing and counting ballots and certifying to the Pennsylvania Department of State election results.

**SO STIPULATED:**

<p><b>On Behalf of Plaintiffs</b></p>  <p>Witold Walczak (No. 62976)      Richard Ting (No. 200438)      Connor Hayes (No. 330447)      ACLU OF PENNSYLVANIA      P.O. Box 23058      Pittsburgh, PA 15222      P: 412-681-7864  <u><a href="mailto:vwalczak@aclupa.org">vwalczak@aclupa.org</a></u>  <u><a href="mailto:rting@aclupa.org">rting@aclupa.org</a></u>  <u><a href="mailto:chayes@aclupa.org">chayes@aclupa.org</a></u></p> <p>Stephen A. Loney, Jr. (No. 202535)      Marian K. Schneider (No. 50337)      ACLU OF PENNSYLVANIA      P.O. Box 60173      Philadelphia, PA 19102      P: 215-592-1513  <u><a href="mailto:sloney@aclupa.org">sloney@aclupa.org</a></u>  <u><a href="mailto:mschneider@aclupa.org">mschneider@aclupa.org</a></u></p> <p><i>Attorneys for Plaintiffs</i></p>	<p><b>On Behalf of Defendant David Ritter</b></p>  <p>Joshua J. Voss (No. 306853)      Shohin H. Vance (No. 323551)      Samantha G. Zimmer (No. 325650)      James G. Gorman, III (No. 328376)      Francis G. Notarianni (No. 327461)      KLEINBARD LLC      Three Logan Square      1717 Arch Street, 5th Floor      Philadelphia, PA 19103      Ph: (215) 568-2000      Fax: (215) 568-0140      Eml: <u><a href="mailto:jvoss@kleinbard.com">jvoss@kleinbard.com</a></u>  <u><a href="mailto:svance@kleinbard.com">svance@kleinbard.com</a></u>  <u><a href="mailto:szimmer@kleinbard.com">szimmer@kleinbard.com</a></u>  <u><a href="mailto:jgorman@kleinbard.com">jgorman@kleinbard.com</a></u>  <u><a href="mailto:fnotarianni@kleinbard.com">fnotarianni@kleinbard.com</a></u></p> <p><i>Attorneys for Defendant David Ritter</i></p>
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**SO STIPULATED:**

<b>On Behalf of Plaintiffs</b>	<b>On Behalf of Defendant David Ritter</b>
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